

PIPE SYMINGTON, GOVERNOR  
EDWARD Z. FOX, DIRECTOR

# ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

February 3, 1992

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ENVIRONMENTAL QUALITY

FEB 4 1992

Representative William A. Mundell  
Arizona House of Representatives  
1700 West Washington  
Phoenix, AZ 85007

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SOLID & SPECIAL WASTE  
SECTION/OWP

Dear Representative Mundell:

I am writing in response to your request that the Arizona Department of Environmental Quality (ADEQ) conduct a complete investigation of the Salt River Pima-Maricopa Landfill. By law, the State does not have jurisdiction on tribal lands. In an effort to facilitate communications with the Arizona's Native American tribes and to allow the State to cooperatively address concerns on tribal lands, the Governor has developed government-to-government agreements with specific tribes. Fortunately, the Salt River Pima-Maricopa is a tribe with which the State has developed such an agreement.

As you know, since wastes from the landfill began to wash out into the riverbed on January 7, 1992 my staff has conducted a preliminary site investigation and on separate occasions, the Governor and I have met with Tribal Chief Ivan Makil and with the Mayors of Scottsdale, Tempe and Mesa to discuss our concerns. As a result of meeting with Chief Makil, I committed the Department to coordinating with the U.S. Environmental Protection Agency (EPA), the U.S. Army Corps of Engineers and the three Mayors to cooperatively assist the tribe in bringing the existing landfill into compliance for closure as well as locating a new facility site outside of the 100-year floodplain within the next several months. Chief Makil committed to working with ADEQ to find a mutually satisfactory resolution to this matter.

Regarding the EPA's jurisdiction on tribal lands, it is my understanding that EPA also has a government-to-government agreement with the Salt River Pima-Maricopa Indian Tribe. As far as the specifics of this agreement (i.e., provisions relating to EPA's enforcement authority on tribal lands), I would need to consult with EPA to obtain further clarification on the content.

According to EPA Region IX, the Agency does not have regulatory authority under the Resource Conservation and Recovery Act (RCRA), however they may have authority pursuant to the Clean Water Act (CWA) if they can prove a violation exists. Apparently, the U.S. Corps of Engineers believes a CWA violation exists due to the overflow of solid waste across the Salt River watercourse adjacent

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Representative William A. Mundell  
February 3, 1992  
Page 2

to the landfill.

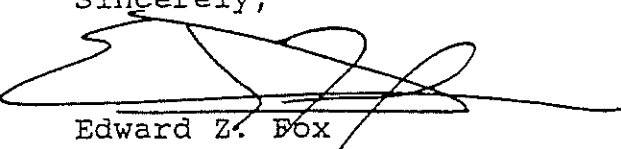
On January 27, 1992, the Department was invited to attend a meeting held by the U.S. Corps of Engineers with representatives of involved parties including: the Salt River-Pima Maricopa Indian Tribe, Indian Health Services and the Environmental Protection Agency. Despite urging from the Tribal members for the regulatory agencies to address this matter via existing government-to-government agreements, the Corps of Engineers stated it may issue a cease and desist order to ensure that all waste remains outside of the normal high water mark (a different standard than that of a floodplain). I anticipate the order being issued within the next week or so. For your information the Corps' jurisdiction arises under section 404 (dredge and fill) of the Clean Water Act.

Currently, the Tribe's landfill operators are attempting to identify the high water mark in order to determine where riprapping is required. Assembling the riprap will require a permit from the Corps of Engineers and clean water certification from EPA. At this meeting, Barry Abbott of my staff extended an offer that ADEQ would provide technical advisory assistance to the operators regarding the Corps' permitting process. We will also be involved to ensure that post closure care of the landfill is protective of regional groundwater quality.

I apologize for the delay in my response to your letter dated January 13, 1992. I realize this is an issue of great concern to you, as it is to me. However, due to the number of federal and state agencies involved and the lack of clear enforcement authority on reservation lands, the problems at the Salt River-Pima Maricopa Landfill are neither easy nor will they be quick to resolve.

I will keep you apprised as further developments occur on this matter. Please do not hesitate to contact me at 257-6917 or Kara Kindermann, Legislative Liaison, at 257-6920 to discuss any additional questions and/or concerns you may have.

Sincerely,



Edward Z. Fox

cc: Rita Pearson, Office of the Governor

P.S. FYI, I've been asked to appear on Horizon on this issue tomorrow night. I believe Senator McCain and Chief Makil have been invited as well.